

Water Committee Minutes  
May 21, 2008

Attendees:

Gail Smith  
Rick Dovey  
Tony DiLodovico  
Julia LeMense

DEP  
Nancy Wittenberg  
Ed Frankel  
Susan Rosenwinkel  
Pilar Patterson  
Nancy Kempel  
Ron Bannister  
Linda Cole  
Jim Murphy  
Jim Pontoriero  
Mary Jo Aiello  
Nick Horiates

DEP staff provided an overview of the Delegation to Local Authorities (DLAs) overseen by the Bureau of Pretreatment. This program is based on a federal model which was modified in New Jersey to allow the option of not including all local authorities. Currently the DLAs permit 800 – 1000 Significant Industrial Users (SIUs) while DEP handles 80 to 100. The decision point as to which local authorities are included is based on the number of SIUs and the workload for DEP. DEP provides oversight of the DLAs, auditing approximately 10% of the permits issued annually (or biannually for the better performing DLAs).

The group began to discuss whether additional programs could be similarly delegated including TWAs and non-industrial facilities. This issue will be discussed at the next meeting.

It was noted that for the pretreatment program permitting is not an issue. There are no adjudications and no delays in issuing permits. The group's efforts are focused more on other work including oversight and rule writing.

There was a lengthy discussion on the Department's rule making process. DEP staff felt strongly that the process was broken and as a result rule writing has become burdensome to the point that desired changes are often not initiated. The process requires numerous legal reviews which often conflict.

It was mentioned that perhaps the problem is with the NJPDES rule itself because it is too big. DEP staff disagreed and noted other rulemaking problems. Impacts to the program are wide-ranging going beyond those related to the rulemaking. This includes the fact that rulemaking is resource intensive, diminishing resources for processing permits. Also legal support gets tied up with rulemaking limiting availability for adjudications.

There was discussion on possible changes to the rulemaking process including having different tracks for rules. The track would be based on whether the rule was being significantly changed, there were isolated changes or no changes.

The group discussed permit renewals and whether there were opportunities to change the process to minimize the effort necessary in instances where there were no factors driving the change other than the 5 year renewal requirement. It was noted that the process itself takes time regardless of what is being changed.

Discharge to Surface Water permitting was discussed. A major issue raised was the fact that other programs within DEP take actions that impact the permitting programs but don't allow sufficient time or resources to coordinate with the permitting programs and/or do not consider implementation issues. The result can be that one part of the Department adopts a requirement that the permitting programs can not implement. Examples include water quality criteria which can't be met as there is no available technology. Science allows for measuring lower and lower levels but there is no means to treat down to those levels. Several examples were noted.

The NJPDES permitting program officials expressed frustration by the fact that there are several groups within the Department that have responsibilities related to water quality and these programs report to different Assistant Commissioners. This makes it difficult to resolve issues due to decreased coordination. From the NPDES program officer perspective, applicants feel they must fight either legally or scientifically to prevent the issuance of a permit with stricter environmental standards. Certain task force members and NJPDES program officers expressed the opinion that the number of adjudications is also affected by provisions of the Clean Water Enforcement Act and the anti backsliding requirements. Thus permits are adjudicated, lots of studies are submitted that must be reviewed by staff and permittees rely on lawyers and lobbyists. It is cheaper to go to court or do lots of studies than upgrade the facility with expensive technology that the permittee may believe is not necessary. In the end, NJPDES program officials were concerned that there is no environmental gain. Besides being frustrating the result is an increased workload. A solution recommended was that new regulatory or policy requirements must address implementation. NJPDES program officials suggested that implementation plans should be done prior to adopting or finalizing new requirements.

Other issues that pull staff from doing work related to permit processing include rule writing, OPRA requests, beneficial reuse projects, TMDLs, legal hearings and NJEMS. Frustrations regarding personnel issues were also noted including decreasing staffing levels, the interview process and the lack of ability to promote or move staff. Staff stated

that they need the ability to promote and transfer, hire the “best-fit” candidate and get replacement staff.

#### Discharge to Groundwater permits (DGWs)

There is no federal oversight on the DGWs.

Frustration with regard to implementation as discussed with surface water discharge permits is the same.

Processing permits that require Water Quality Management Plan amendments was mentioned as a problem especially for facilities such as schools, hospitals and mobile parks. The permit can't be issued until the amendment is done which frustrates applicants with re-designs and even encourages applicants to fight to get under the discharge cutoff flow and not need a permit. This requires significant staff resources and often results in a permit not being issued. DGW staff also questioned some science behind the new WQMP rules with regard to discharge to groundwater standards. DGW staff suggested that the process would benefit from an implementation plan being required in connection with WQMP amendments.

The DGW program has a process where applicants write their own permit or Ground Water Protection Plan. Landfills do their own GWPP as the sites are very complicated.

A question regarding whether the process could be streamlined for schools was raised. It was noted by staff and one task force member that the public notice process takes up a lot of time, but it does not appear that the public notice requirement is the driver for permit delay.

#### Stormwater Permits

NJEMS has presented this program with some challenges. Due to the nature of the regulated universe the program has tried to be creative in how the permits are crafted. This has not meshed well with the NJEMS framework. An example is that the desire to go to more electronic permitting has been hampered. General Permit renewals have to be done manually which takes 2 weeks. The industry specific General Permits have been very difficult. As any changes must be made manually to each permit. It was recommended that NJEMS upgrades should be prioritized to achieve maximum efficiencies.

Another frustration noted was the difficulty to access the authorized version of the regulations. Access must be through West Law which is limited to certain computers.